

Benejam



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Paragon Investment Corporation

File: B-241715

Date: January 30, 1991

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for the protester.
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DIGEST

Where a bid offers a minimum bid acceptance period of 30 days
in response to a sealed bid solicitation requiring 90 days,
the bid is nonresponsive and may not be corrected after bid
opening, since the minimum bid acceptance period is a
material requirement of the solicitation, which must be
complied with at bid opening.

DECISION

Paragon Investment Corporation protests the rejection of its
low bid as nonresponsive under invitation for bids (IFB)
No. F41685-90-B0029, issued by the Department of the Air Force
for the demolition of buildings at Laughlin Air Force Base,
Texas. The IFB required a minimum bid acceptance period of
90 days; however, Paragon's bid specified a 30-day acceptance
period. Paragon contends that it should be allowed to correct
its bid because the 30-day acceptance period was an
inadvertent clerical error.

We deny the protest.

The IFB, issued on July 27, 1990, contained the standard
minimum bid acceptance period clause, Federal Acquisition
Regulation (FAR) § 52.214-16, requiring a minimum bid
acceptance period of 90 calendar days. The Air Force
received 10 bids by bid opening on September 7; Paragon
submitted the apparent low bid. By letter dated September 28,
however, the contracting officer rejected Paragon's bid as
nonresponsive because it specified a 30-day acceptance period
rather than the 90 days required by the IFB.

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A provision in a sealed bid solicitation requiring that a bid remain available for the government's acceptance for a 90-day period is a material requirement that must be complied with at bid opening for the bid to be responsive. San Sierra Business Sys., B-233858, Dec. 27, 1988, 88-2 CPD ¶ 629. Since Paragon's bid specified a 30-day acceptance period, it was nonresponsive and the Air Force thus was required to reject the bid and to refuse Paragon's offer to correct it after bid opening. Accent Stripe, Inc., B-241161, Oct. 9, 1990, 90-2 CPD ¶ 274.

Paragon alleges that inserting the figure "30" rather than the figure "90" to indicate the minimum bid acceptance period was an inadvertent clerical error that it should be allowed to correct, especially since it notified the contracting officer of the mistake soon after bid opening. A nonconforming acceptance period specified in a bid, however, is not a minor irregularity or mistake which may be explained, changed, or corrected after bid opening. General Elevator Co., Inc., B-226976, Apr. 7, 1987, 87-1 CPD ¶ 385. Paragon asserts that given the effort it expended in studying the drawings and specifications accompanying the IFB, and the amount of time it dedicated to preparing its bid, it would not be logical for a bidder to intentionally provide less than the 90-day required bid acceptance period. The fact remains, however, that by inserting the figure "30" rather than "90" to indicate the minimum bid acceptance period, Paragon legally committed itself to only a 30-day acceptance period, contrary to the requirements of the IFB. Accent Stripe, Inc., B-241161, supra.

Paragon further argues that paragraph (d) of the IFB's bid acceptance period clause does not require bidders to insert the total number of days allowed for the government's acceptance. Rather, Paragon asserts that paragraph (d) could reasonably be interpreted to merely require bidders to insert the period offered in excess of the 60-day acceptance period referenced in line 12 of the Standard Form (SF) 33, "Solicitation, Offer and Award."^{1/}

^{1/} Line 12 of the SF 33 states in relevant part:

"the undersigned agrees, if this offer is accepted within ___ calendar days (60 calendar days unless a different period is inserted by the offeror) from the date for receipt of offers specified above, to furnish any or all items upon which prices are offered at the price set opposite each item, delivered at the designated point(s), within the time specified in the schedule."

The bid acceptance period clause in the IFB to which Paragon refers, FAR § 52.214-16, states in relevant part:

"(a) "Acceptance period," as used in this provision, means the number of calendar days available to the Government for awarding a contract from the date specified in this solicitation for receipt of bids.

(b) This provision supersedes any language pertaining to the acceptance period that may appear elsewhere in this solicitation.

(c) The Government requires a minimum acceptance period of 90 calendar days.

(d) In the space provided immediately below, bidders may specify a longer acceptance period than the Government's minimum requirement. The bidder allows the following acceptance period: _____ calendar days.

(e) A bid allowing less than the Government's minimum bid acceptance period will be rejected.

(f) The bidder agrees to execute all that it has undertaken to do, in compliance with its bid, if that bid is accepted in writing within (1) the acceptance period stated in paragraph (c) above or (2) any longer acceptance period stated in paragraph (d) above." (Emphasis added.)

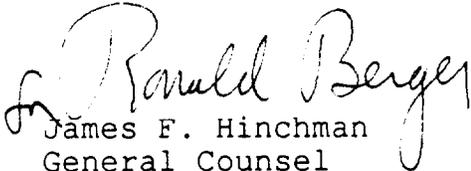
The provision explicitly defines "acceptance period" and clearly indicates that any number specified in paragraph (d) is to be the total acceptance period, especially since paragraph (f) is stated in the alternative. See San Sierra Business Sys., B-233858, supra. The provision also expressly cautions bidders that bids allowing less than the required minimum acceptance period would be rejected. Since the minimum acceptance period is a material requirement with which Paragon did not comply, the contracting officer had no alternative but to reject its bid as nonresponsive.

As evidence of its intention to offer a 90-day acceptance period, Paragon points out that it inserted the figure "90" in line 12 of the SF 33 (concerning the minimum acceptance period) and in paragraph 9 of section K of the IFB. A note immediately above line 12 on the SF 33 informed bidders that it did not apply where, as here, the IFB contained FAR § 52.214-16. Similarly, a note immediately following the title line of section K, "Representations, Certifications, and Other Statements of Offeror," informed bidders that clauses preceded by "[]" are applicable only if marked "[X]."

Paragraph 9 of section K contained FAR § 52.215-19, "Period for Acceptance of Offer," a standard clause used in negotiated procurements, not marked "[X]," indicating that it was inapplicable. Moreover, FAR § 52.214-16(b) clearly states that it "supersedes any language pertaining to the acceptance period that may appear elsewhere in this solicitation." Therefore, based on the plain language of the solicitation, Paragon's entry in that section was controlling. See Cardkey Sys., B-220668, Jan. 29, 1986, 86-1 CPD ¶ 105, aff'd, B-220668.2, Mar. 12, 1986, 86-1 CPD ¶ 243. In any event, Paragon's bid was at best ambiguous, and therefore nonresponsive, by virtue of the conflicting bid acceptance period figures that it contained. Id.

Contrary to Paragon's position, compliance with the required bid acceptance period is necessary so that all bidders share the same business risks of leaving their bids open for acceptance by the government for the same amount of time. A bidder who is allowed to specify a shorter acceptance period, whether by accident or design, would enjoy an unfair competitive advantage because it would be able to refuse the award after its bid acceptance period expired should it decide that it no longer wanted the award, for example, because of unanticipated cost increases, or extend its bid acceptance period after competing bids have been exposed. General Elevator Co., Inc., B-226976, supra.

The protest is denied.


James F. Hinchman
General Counsel